

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 1:09CR57-4
(Judge Keeley)

LANCE ERIC APPLEWHITE;

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S OPINION AND
REPORT AND RECOMMENDATION [DKT. NO. 70], AND DENYING
THE DEFENDANT'S PRO SE MOTION FOR RELIEF
FROM PREJUDICIAL JOINDER [DKT. NO. 54]

On August 5, 2009, the defendant, Lance Applewhite ("Applewhite") filed a pro se Motion for Relief from Prejudicial Joinder, arguing that he wanted to avoid being bound by a continuance granted by the Court at the request of a co-defendant; that a severance should be granted because he was prepared to proceed with the trial date previously set by the Court; and that he wanted to assert his speedy trial rights (dkt. no. 54). Prior to the filing of this motion, the Court had referred all non-dispositive motions in the case to United States Magistrate Judge John S. Kaull on June 30, 2009 (dkt. no. 30). After Magistrate Judge Kaull considered Applewhite's motion, he issued an Opinion and Report and Recommendation ("R&R") recommending that the motion for relief from prejudicial joinder be denied (dkt. no. 70).

The R&R also specifically warned Applewhite that his failure to object to the recommendation within ten days of receipt of the

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R&R would result in the waiver of any appellate rights he might have on this issue. No objections have been filed.¹

The Court, therefore, **ADOPTS** the Opinion and Report and Recommendation in its entirety (dkt. no. 70), and **DENIES** Applewhite's motion for relief from prejudicial joinder (dkt. no. 54).

It is so **ORDERED**.

The Court directs the Clerk to transmit a copy of this Order to counsel of record, and to mail a copy to the defendant Lance Eric Applewhite, certified mail, return receipt requested.

Dated: November 17, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).